



Journalism Code Call for Views
Policy & Engagement Department
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire SK9 5AF
journalismcode@ico.org.uk

24 May 2019

Dear Sirs

ICO call for views on a data protection and journalism code of practice

Thank you for the opportunity to provide our views on the data protection and journalism code of practice. Please find our responses below.

Obviously, should you have any queries or require any further information, please do not hesitate to contact us.

Yours faithfully

Channel 5 Broadcasting Limited

Questions

Q1 We are considering using our current guidance "Data protection and journalism: a guide for the media" as the basis on which we will build the new journalism code. Do you agree or disagree with this approach?

☒ Agree

☐ Disagree

Q2 If you disagree, please explain why?

Q3 "Data protection and journalism: a guide for the media" is split into three sections:

- "Practical guidance" aimed at anyone working in the journalism sector;
- "Technical guidance" aimed at data protection practitioners within media organisations; and
- "Disputes", aimed at senior editors and staff responsible for data protection compliance.

Do you think we should retain this structure for the code?

☒ Yes

☐ No

Q4 If no, do you have any suggestions about how we should structure the code?

Q5 Do you think the ICO's existing guidance for journalists addresses the main areas where data protection issues commonly arise?

☐ Agree

☒ Disagree

Q6 If no, what additional areas would you like to see covered?

While we are happy that the existing guidance covers many of the main areas, there are a number of additional areas that we think it would be helpful to include.

As a member of the Media Lawyers Association ("MLA") we have input into and endorse the MLA's submission in response to the ICO's call for views on the Journalism Code of

Practice which sets out a number of additional areas that we would like to see included or amended to more closely reflect the current legal position.

Of particular importance to us are:

- The protection of journalists sources. S10 of the Contempt of Court Act 1981 recognises the importance to freedom of expression of the protection of journalism and journalists sources. It states that disclosure should only be ordered where disclosure is “necessary in the interests of justice or national security or for the prevention of disorder or crime”. The courts have recognised that this applies to the disclosure of documents and other material that could lead to the identification of sources. We do appreciate that the ICO is not a court for the purposes of the Contempt of Court Act, but would hope that the new Code will reflect the high threshold for such disclosure which is not currently reflected in the existing guidance.
- Recognition that there is a public interest and protection for the collection and processing of contact information and other material at the preliminary stages of a journalists investigation for research or development purposes where wrongdoing may only be suspected, some or all of which data, depending upon the outcome of the investigation, may not end up being broadcast.

Q7 The journalism code will address changes in data protection law, including developments in relevant case law. Are there any particular changes to data protection law that you think we should focus on in the code?

As above, as a member of the MLA, we have input into and endorse the MLA’s submission in response to this question.

Q8 Apart from recent changes to data protection law, are there any other developments that are having an impact on journalism that you think we should address in the code?

As above, as a member of the MLA, we have input into and endorse the MLA's submission in response to this question.

Q9 Are there any case studies or journalism scenarios that you would like to see included in the journalism code?

As above, as a member of the MLA, we have input into and endorse the MLA's submission in response to this question.

Q10 Do you have any other suggestions for the journalism code?

As above, as a member of the MLA, we have input into and endorse the MLA's submission in response to this question.

Of particular concern to us is any suggestion that journalists need to notify data subjects that their data is being processed, save in exceptional circumstances. Both the broadcasting regulator, Ofcom, and the law recognise circumstances in which individuals or organisations should normally be notified of serious allegations that are being investigated or which are likely to be published in order to give them an appropriate opportunity to respond. The ICO's current guidance refers to journalists needing a "valid

reason” not to notify when personal data is being collected and processed. This suggests that there is effectively a prior notification requirement in relation to data, something that was specifically rejected in *Moseley v UK* and which is not a regulatory requirement for broadcasters. As the ICO recognises, it is not and does not wish to become a specialist media regulator which is why we support a principles-based approach to the Code as opposed to content that could be interpreted as or become a regulatory requirement or prescriptive procedure incompatible with the media’s important role in imparting information to the public who have a legitimate corresponding interest in receiving such information.

About you

Q11 Are you answering these questions as?

- ☒ A media organisation?
- ☐ A trade association?
- ☐ An organisation representing the interests of data subjects?
- ☐ An academic?
- ☐ An individual acting in a professional capacity?
- ☐ An organisation that regulates press standards?
- ☐ An individual acting in a private capacity (e.g. someone providing their views as a member of the public)?
- ☐ Other?

If you answered 'other' please specify:

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Q12 How did you find out about this survey?

- ☒ ICO website
- ☐ Social media
- ☐ Conference/seminar
- ☐ Trade/professional association
- ☐ Media
- ☐ Word of mouth
- ☐ Other?

Q13 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

Marcus Lee

[REDACTED]

Thank you for taking the time to share your views and experience.